

ACBOE meeting that he simply copied the items that had already been approved for Year Five funding to RelComm in completing the Year Six Form 470. A true and correct copy of the minutes of the Board Meeting is attached hereto as Exhibit I.

27. ACBOE, through its agent, Alemar, announced that attendance at an on-site tour of the ACBOE facilities was a mandatory precondition for submitting a bid for Year Six and that only vendors who participated in that tour would be considered *qualified* bidders for ACBOE's Year Six application. See Exhibit K, attached hereto.

28. ACBOE's Forms 470 misled both the SLD and the bidding public by failing to announce the on-site tour of the facilities, which it had announced was required. Form 470 requires that any additional requirement that the school wishes to add to the normal E-Rate requirements must be noted and described on the form, so that it can be evaluated by the SLD. A true and correct copy of each of the Year Six Forms 470 completed by Alemar is attached hereto as Exhibit J.

29. The mandatory tour of ACBOE facilities was conducted on January 24, 2003 by Jon Holt of Informed Resources. There is a long-standing relationship between Alemar and Informed Resources. When Alemar manages an E-Rate program bid for a school, Informed Resources frequently is awarded a contract by that school.

30. Holt told participants in the tour that he was an employee of Alemar, which is not true. Holt failed to disclose to RelComm and the other attendees that his company was a frequent recipient of bid awards when Alemar managed the bid process. Moreover, Holt's company is a frequent competitor of MTG in many E-Rate districts, but in this case Holt did not bid on the contract but instead worked with Alemar to ensure that MTG was the successful bidder. RelComm intends to take discovery on this issue. RelComm videotaped the walk-through.

31. Prior to the walk-through, in an e-mail message, RelComm had requested clarification from Friedman and Alemar as to the scope of the bid request. In an e-mail response, Friedman told Suzanne Zammit, a RelComm employee, that RelComm's questions would be answered at the walk-through. A true and correct copy of the e-mails and attachments exchanged by the parties is attached hereto as Exhibit K. Notwithstanding that promise, no one at the walk-through was able or willing to answer RelComm's questions about the bid specifications.

32. Holt told RelComm what had previously been implied in ACBOE's Forms 470. He stated during the tour that the Atlantic City High School facility was not included within the scope of the Year Six bid solicitation. Holt also told the bidders at the walk-through to bid only on the comprehensive Form 470, not the individual building Forms.

33. Unknown to RelComm at the time, ACBOE and Alemar had conducted a prior secret tour of the High School facility for MTG. Attached hereto as Exhibit L is a true and correct copy of the sign-in sheet from that private tour.

34. MTG's winning bid was the only bid that included the provision of network services to the High School facility. None of the other bidders including RelComm bid on the High School facility because they were told it was not part of the bid. A true and correct copy of MTG's bid is attached hereto as Exhibit M.

35. Holt also reiterated at the tour what ACBOE and Alemar had previously told bidders: that ACBOE was interested only in expansion of its network structure and that the expansion must be compatible with the existing network. The contract awarded to MTG, however, includes \$1.8 million for the purchase of replacement network equipment, including 49 unnecessary servers, which are all meant to replace the existing network, not expand it. See Exhibit M.

36. The contract awarded to MTG also includes \$800,000 to install a video PBX. The video PBX was not contained anywhere in the Form 470 specifications published by ACBOE and Alemar. MTG's bid was the only one that included a video PBX installation. See Exhibit M.

37. In its Fed. R. Civ. P. 26(a)(1) initial disclosures in the federal court litigation, MTG identified and produced a copy of a document entitled "What Every School Wants, a PBVX." That document was originally printed from a website by representatives of RelComm and was given by RelComm to ACBOE in or about September, 2002 in connection with RelComm's proposal to ACBOE for Year Five to install a video PBX system at ACBOE. A true and correct copy of that document is attached hereto as Exhibit N.

38. MTG could only have received Exhibit M from ACBOE as part of the private specifications for the Year Six bid given only to MTG. This document demonstrates that ACBOE provided separate specifications, either directly or through Alemar, to MTG that none of the other bidders including RelComm received.

39. MTG produced two other documents to RelComm in the federal court litigation that prove that MTG was given specifications that were not given to other bidders. MTG produced a document entitled "Network Diagram of ACBOE." This document was actually prepared by RelComm employees and given to ACBOE in or about November, 1999. A true and correct copy of the "Network Diagram of ACBOE" document is attached hereto as Exhibit O.

40. MTG could only have received Exhibit O, which is a flow chart of the then existing data network, from ACBOE either directly or through Alemar. The document was not provided by ACBOE to any other bidder.

41. MTG also produced a document that illustrated a network wiring configuration, which was also created by RelComm employees and given to ACBOE in or about November,

1999. Again, this document, which contains RelComm's analysis for ACBOE in Year Two for additional work that should be done, could only have been given to MTG by ACBOE or Alemar. A true and correct copy of the network wiring diagram is attached hereto as Exhibit P.

42. No other vendor was given a copy of Exhibits N, O or P, and neither RelComm nor any other bidder was told that these documents were included in the specifications for the bid.

43. The MTG bid and the Form 471 submitted to SLD for Year Six funding based on MTG's bid, did not comply with the bid specifications given to RelComm and other bidders on Form 470. Those bid specifications drafted by Alemar and published by ACBOE, were so confusing and ambiguous that the bidders -- with the exception of MTG, which had access to a separate set of specifications -- did not know what was included in the bid.

44. The bids submitted in response to the Year Six Form 470 ranged from approximately \$200,000 to \$3.6 million, a variation of 1800%. MTG's winning bid was the highest at \$3.6 million. The next highest bid was less than half that amount at \$1.4 million. See Exhibit Q attached hereto. No public bid opening was conducted; instead, ACBOE representatives Donna Haye, Fred Nickels, Marilyn Cohen and Martin Friedman went into a room, without any bidders present, and opened the bids. These procedures violate New Jersey's public bidding statutes.

45. The \$1.4 million bid was disqualified by Alemar purportedly because it contained items that did not qualify for E-Rate program funding -- a defect that did not seem to bother ACBOE or Alemar with respect to MTG's successful bid, which also contained \$300-400,000 of non-E-Ratable items.

46. Alemar has previously acted as the bid manager for other school districts in the Commonwealth of Pennsylvania and in New Jersey. In every instance in which Alemar has

managed the E-Rate bid process on behalf of a school district, a total of 31 times dating back to Year Three of the Federal E-Rate program, MTG has received a contract award each and every time. Of the 11 school districts where MTG is currently doing work, 10 of these districts had their bid process managed by Alemar. A true and correct copy of a print-out from the USAC web site showing E-Rate contracts on which Alemar and MTG have collaborated is attached hereto as Exhibit R.

47. There is also a long-standing relationship between Alemar and Informed Resources – the company that conducted the mandatory walk-through for ACBOE – similar to that between Alemar and MTG. Informed Resources has received several contracts for bids managed by Alemar. See Exhibit R. Moreover, and contrary to the statements made by Jon Holt (who conducted the Year Six mandatory walk-through), ACBOE representative Marilyn Cohen admitted that Holt may actually be an employee of *Alemar*, which would constitute a conflict of interest and violation of the bidding statutes to the extent Informed Resources is awarded contracts by Alemar.

48. Neither ACBOE nor Alemar disclosed to RelComm that, every time Alemar manages an E-Rate program bid for a school district, MTG and Informed Resources invariably receive the contracts.

49. If MTG is permitted to go forward with its Year Six contract, it will, presumably, perform it in full, which will entail, among other things, dismantling the existing ACBOE data network and replacing it with unnecessary new equipment. I have been informed that that process has already commenced. In fact, upon information and belief MTG is already in the process of performing the contract, and to date has submitted to ACBOE purchase orders totaling \$300,000.

50. However, I believe that ACBOE does not really intend to dismantle and replace all of its practically brand new network, which was designed to more than satisfy all of ACBOE's data network needs well into the future. Instead, I believe that ACBOE is planning to use a large portion of the Year Six E-Rate funds to help close its recently publicized budget deficits in non-E-Rate funded programs. True and correct copies of recent newspaper articles about ACBOE are attached hereto as Exhibit S.

51. On December 13, 2003, ACBOE announced its intention to solicit bids for Year Seven of the E-Rate program by posting its Form 470 on the SLD website. Again, as with its Year Six solicitation, ACBOE hired Alemar and Friedman to draft its Form 470, conduct the bidding process for its Year Seven application and recommend award recipients to ACBOE.

52. The Form 470 drafted by Alemar and Friedman is, again, unrelated in any way to ACBOE's Technology Plan or needs. Instead, Alemar copied, word for word, the "winning bid" submitted by MTG for Year Six onto the Year Seven Form 470. A true and correct copy of the Year Seven Form 470 is attached hereto as Exhibit T. It included the identical items and product numbers as had been contained in MTG's Year Six bid. It even called for the same particular product brands and the specific configuration of products contained in MTG's Year Six bid.

53. RelComm requested information about the Year Seven bid from Alemar on December 18, 2003. In response, Friedman, in an e-mail dated the evening of December 19, 2003, stated the bid specifications, which included notice of a mandatory bid conference and walk-through, but did not specify the date of the walk-through. A true and correct copy of Friedman's response is attached hereto as Exhibit U.

54. When RelComm requested further information, Friedman responded on December 23, 2003, that a technical walk-through, which was a pre-condition for submitting a bid, was scheduled for January 6, 2004. A true and correct copy of Friedman's response is

attached hereto as Exhibit V. Friedman did not inform RelComm in either his December 19 or 23 e-mails that a walk-through of the facilities had already occurred earlier in the day on December 19, which RelComm would have attended had it been notified about it.

55. Pursuant to N.J.S.A. 18A:18A-15, RelComm lodged a challenge to the bid with ACBOE in response to the Year Seven Form 470. In a letter to ACBOE faxed on January 7, 2004 and hand-delivered on January 8, 2004, with a copy to Christopher Brown, Esquire (ACBOE's solicitor), RelComm put ACBOE on notice that its Year Seven Form 470 violated New Jersey law in the following respects:

- (1) The bid specifications again required a mandatory walk-through of the ACBOE facilities in violation of New Jersey bidding statutes and E-Rate regulations, as ACBOE did not follow any other portions of the New Jersey bidding statutory procedures;
- (2) The mandatory walk-through was scheduled for January 6, 2004, just 3 business days prior to the arbitrary deadline established by ACBOE and Alemar for the submission of bids. Defendant Friedman, who conducted the tour, refused to allow audio or video taping during any part of the tour, in violation of well-established procedures followed in New Jersey for public bids;
- (3) The site diagrams given to the prospective bidders during the tour did not provide vital information needed for the bid and were only diagrams utilized for fire code inspections,

and not network diagrams consisting of wiring runs,
equipment locations or specifications of any kind;

- (4) Friedman told prospective vendors at the walk-through that they should include with their quote a Design Study for the District -- something the District was supposed to have done before applying for E-Rate moneys. He also told vendors that they could add a contingency fee to cover unforeseen conditions not contained in the specifications. Contingency fees, although e-ratable, are meant to cover true emergencies and unforeseen circumstances, not poorly thought out and prepared bid specifications;
- (5) The bid specifications contained in the Year Seven Form 470 are not a re-bidding of the Year Six Form 470, as represented by Friedman during the tour, but, instead, are an exact copy of MTG's Year Six bid. Thus, the Year Seven bidders were told to bid on specifications actually drafted by MTG, the prior year's awardee;
- (6) MTG's participation in the walk-through as a potential bidder on a project for which it had drafted the specifications violates both New Jersey bidding statutes and E-Rate regulations;
- (7) Certain bid specifications call for particular brand names and certifications without any provision for equivalents, in violation of the New Jersey bidding statutes;

- (8) The bid specifications contain numerous technical defects (including calling for replacement of wiring that has 17 years left under warranty) and are technically deficient, in that they omit critical items that are required by the listed configurations; and,
- (9) During the walk-through, after Friedman declined to answer RelComm's question about who developed the bid specifications, Marilyn Cohen, Assistant Superintendent, announced, contrary to fact, that the specifications had been developed by a committee comprised of Nickels, Haye and her.

A true and correct copy of this letter is attached hereto as Exhibit W.

56. ACBOE ignored RelComm's bid challenge in violation of N.J.S.A.18A:18A-15. Instead, at a Board meeting on January 27, 2004, ACBOE voted to approve ACBOE's participation in the Year Seven E-Rate program, and, immediately thereafter, Friedman announced that MTG had been awarded a contract by ACBOE for Year Seven. The Form 471 filed with the SLD by ACBOE requesting funding for the Year Seven contract awarded to MTG omitted reference to the High School facility, despite that the High School had been included in the specifications on ACBOE's Form 471. A true and correct copy of the Form 471 is attached hereto as Exhibit X. I believe this was done intentionally by ACBOE, at Friedman's suggestion, to bump ACBOE's school lunch participation figures up from 87% to 90%.

57. The SLD states on its web site that it relies, in part, on private litigants to alert it to possible violations of its regulations and procedures. It is my understanding from conversations that I have had over the years with SLD personnel that the SLD has a very small

enforcement staff and relies upon private parties in connection with its enforcement activities out of necessity. Attached hereto as Exhibit Y is a page from the USAC web site, www.sl.universalservice.org (List of Persons Suspended or Debarred from the Schools and Libraries Support Mechanism), which illustrates this point. Attached hereto as Exhibit Z are copies of three suspension notices from the FCC.

58. Attached hereto as Exhibit AA is a true and correct copy of a page from the USAC web site, www.sl.universalservice.org (Ch. 5 – Service Provider Role in Assisting Customers).

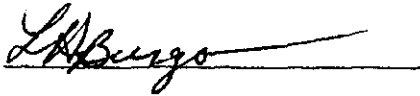
59. Attached hereto as Exhibit BB are true and correct copies of the Information and Memorandum of Plea Agreement in the case of United States v. Maynard, No. CRI-03-5325 (E.D.Ca. August 19, 2003; August 26, 2003).

60. Attached hereto as Exhibit CC is a true and correct copy of the Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form.

I hereby certify that the foregoing statements made by me are true and correct. I hereby certify that if any of the foregoing statements made by me are willfully false, I will be subject to punishment.


MICHAEL SHEA

Sworn to and subscribed before me
this 19th day of April, 2004.



LORIE A. BURGO
A Notary Public Of New Jersey
My Commission Expires 9/3/2007



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J. PHILIP KIRCHNER, ESQUIRE
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PLEASE RESPOND TO CHERRY HILL

February 25, 2005

Via Overnight Mail

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

**Re: IN THE MATTER OF REQUEST FOR REVIEW BY RELCOMM, INC. OF
DECISION OF UNIVERSAL SERVICE ADMINISTRATOR
CC Docket No. 02-6
SLD decisions 1185824, 1185996, 1185946, 1185717, 1185789 and 1185745
Year Seven E-Rate decisions dated January 11, 2005
Billed entity #123420: Atlantic City Board of Education**

Dear Sir or Madam:

This office represents RelComm, Inc., a New Jersey corporation with its principal place of business located at 408 Bloomfield Drive, Suite 3, West Berlin, New Jersey. RelComm is in the business of designing, installing and maintaining computer networks, including both hardware and software, for, among others, municipal and other public entities, including various school boards. RelComm is an "aggrieved party" which participated in the bid process for entity #123420, the Atlantic City Board of Education ("ACBOE"), for Year Seven of the E-Rate program, and hereby appeals from the decision of the SLD dated January 11, 2005, granting funding request numbers 1185824, 1185996, 1185946, 1185717, 1185789 and 1185745. As set forth more fully below, this appeal is based upon prohibited behavior by the applicant (ACBOE), and its consultant (Aleamar Consulting and its principal Martin Friedman (collectively, "Friedman")). RelComm alleges that

ACBOE and Friedman violated specific SLD regulations and FCC orders in procuring the funding commitment for Year Seven.

I. Question presented for review.

Whether ACBOE's and Friedman's acts, omissions and violations of specific SLD regulations and FCC orders in connection with the procurement of funding for Year Seven warrant (1) a reversal of the SLD's decision to fund ACBOE's Year Seven application, and/or (2) suspension or disbarment of these entities from participation in the E-Rate program.

II. Background

In late 2003, ACBOE indicated its intention to submit an application for funding to the SLD under Year Seven of the E-Rate program. ACBOE solicited bids from qualified vendors to provide ACBOE with the services and equipment to be requested by ACBOE in its Year Seven application. Due to a number of irregularities and problems with the bid specifications contained in the Form 470 and other documents posted by ACBOE and Friedman for the Year Seven bid, RelComm filed a formal challenge to the Year Seven request for bids to the Purchasing Agent of ACBOE. See N.J.S.A. 18A:18-15. A true and correct copy of RelComm's letter to the ACBOE Purchasing Agent sent on January 7, 2004 challenging the Year Seven bid request is attached hereto as Exhibit A. Contrary to New Jersey practice, see Entech Corporation v. City of Newark, 351 N.J. Super. 440, 462, 798 A.2d 681, 694 (NJ Law Div. 2002) (copy attached hereto as Exhibit B) (entity challenging bid specifications is entitled to explanation from contracting agency regarding the challenge), ACBOE neither suspended the bid, nor responded to RelComm's challenge. Instead, ACBOE wrote a disparaging letter about RelComm's claims to other bidders -- but not to RelComm -- and, in fact, to this day, ACBOE has never responded to RelComm's challenge. RelComm waited for the ACBOE's reply to its challenge, assuming that the bid had been suspended pending that reply.

Unbeknownst to RelComm, however, ACBOE did not suspend the bid, but instead went forward with it without responding to RelComm's challenge. As a result, RelComm was prevented from submitting its bid to ACBOE for Year 7.

III. Specific violations and prohibited behavior.

A. FRN 1185824

This award in the amount of \$146,606.40 (at the ACBOE 90% discount rate) (the total pre-discount award amount is \$162,896.00) is to Micro Technology Group ("MTG") for extended warranties, as specified in Form 470 #678310000481953. This award is a duplicate of an award to ACBOE during Year 6 under FRN #526880000481973. That Year 6 funding decision is currently under review by the FCC as a result of RelComm's Request for Review, under CC Docket No. 02-6. The equipment for which the extended warranties have now been funded has not even been purchased yet, let alone installed at the ACBOE facilities. Even if purchased and installed before the end of the Year 7 funding year, which is unlikely, given the pendency of RelComm's Request for Review of the Year 6 funding award, that equipment would still be covered under its original factory warranties and would not need the extended warranties covered by this FRN. Under SLD rules, warranties are only eligible for funding during the funding year of their application. See Exhibit C.¹

This funding decision to pay for extended warranties on equipment that has not even been purchased yet by ACBOE is a violation of FCC rules and must be overturned by the FCC.

¹ This funding decision should also be overturned because the services funded by this FRN include, in part, maintenance of equipment located at the ACBOE High School facility. As noted above, ACBOE, on the advice of its E-Rate program consultant, Alemar Consulting, split its Year 7 request for funding into two separate Form 470s -- one for the High School facility and one for all other facilities. The High School, due its different demographic profile, is eligible only at the 80% level, and, thus, should not be funded with the rest of ACBOE's buildings at the 90% level. See section III.B.

B. FRN 1185996

This award in the amount of \$299,068.20 (at the ACBOE 90% discount rate) (the total pre-discounted award is in the amount of \$332,298.00) is also to MTG for the purchase and installation of a 165 node VPBX at the ACBOE High School facility, as specified in Form 470 #678310000481953. RelComm believes that the SLD funded this request by mistake. In its Year 7 pre-bid posting, ACBOE, upon the advice of Friedman, filed two separate Form 470s. One form 470 covered only the High School facility; the second Form 470 covered all of ACBOE's other facilities. The decision by ACBOE and its consultant, Friedman, to file two separate Form 470s was motivated by the demographics of the Atlantic City school system. Students in all ACBOE schools except the High School participate in the school lunch program at or above the 90% level. Thus, the E-Rate program eligibility rate for all facilities except the High School facility is 90% or higher. Students at the ACBOE High School, by contrast, participate in the school lunch program at a rate of 80% or lower, and, thus, the High School eligibility rate, when that facility is considered alone, is at 80% or lower. As is evident from the ACBOE bid packet distributed to potential Year 7 bidders, and, as was made clear during the mandatory tour of facilities prior to the Year 7 bid, the VPBX unit is intended to be located at the ACBOE High School facility. It, therefore, should not have been funded in connection with ACBOE's request for funding in the 90% wave of funding. See Exhibit D.

For these reasons, RelComm requests that the SLD's funding decision on FRN 1185996 be reversed.

C. FRNs 1185946; 1185717

These two FRNs award the identical same work to two different vendors and are, therefore duplicates of each other. Both awards are for 200 cable drops for the ACBOE New Jersey Ave.

school facility. ComTec Systems, Inc. is awarded \$58,725.00 in Form 470 #678310000481953 (FRN #1185946) (the total pre-discounted award is in the amount of \$65,250.00) for 200 cable drops at the New Jersey Ave. school, and E-Plus is awarded \$64,954.80 for the same work through Form 470 #402280000287123 (FRN #1185717) (the total pre-discounted award is in the amount of \$72,172.00). See Exhibits E and F. In addition, as if that were not bad enough, documents produced by ACBOE in discovery in the litigation initiated against it by RelComm demonstrate that the 200 cable drops have already been installed in the New Jersey Ave. School by another vendor. See Exhibit G. Finally, ACBOE contracted for the identical work in its Year 6 E-rate awards to MTG. Thus, neither FRN should have been funded, as the work is duplicative of work already performed and work previously awarded to another vendor -- MTG -- in Year 6 and is, therefore, an unnecessary expenditure. For these reasons, RelComm requests that both SLD funding decisions be reversed. See Exhibit H.

D. FRN 1185789

This award in the amount of \$67,050.00 at ACBOE's 90% discount rate (the total pre-discounted award is in the amount of \$74,500.00) is to ComTec Systems, Inc. The decision to fund this item is a mistake because it is for maintenance of wiring that has not even been installed yet. ComTec's winning bid is a duplicate of ACBOE's Year 6 award to MTG, which is currently under FCC review. ComTec also bid to install this wiring in Year 6, but its bid was rejected by ACBOE in favor of MTG's bid. However, because ACBOE's Year 6 receipt of funding is currently under review by the FCC as a result of RelComm's challenge, neither MTG nor ComTec nor anyone else has ever installed the wiring that this FRN proposes to fund to be maintained. The wiring, if and when installed, will be covered by warranty, and, thus, it is a waste of the school board's and the

SLD's money to fund maintenance of that wiring. See Exhibits I and J. RelComm requests that this funding decision by the SLD be reversed.

E. FRN 1185745

This FRN in the amount of \$49,725.00 at ACBOE's 90% discount rate (the total pre-discounted award is in the amount of \$55,250.00) is an award to Vertex Technologies, Inc. d/b/a Win Laboratories and includes funding for all network equipment maintenance, including, for example, distance learning units. These are district-wide activities, which include the High School facility. The Network Chassis and backbone at the High School facility comprise almost 33% of the ACBOE network. Maintenance of the ACBOE network would necessarily include maintenance of the network equipment located at and serving the High School facility, because ACBOE has no other application that does cover the High School building. As noted above, however, the High School facility was separated by the school district and its E-Rate program consultant, Friedman, into a separate Form 470. Because the High School eligibility discount percentage is only 80% or less, services located at or serving the High School facility should not be funded at the 90% discount level achieved by the other ACBOE facilities. See Exhibit K.

For these reasons, at least a portion of this funding decision must be reversed. If ACBOE is unable to provide a reasonably accurate breakdown of the percentage of this FRN that applies to the High School facility as contrasted to the 90% eligible schools, then the entire funding decision must be reversed.

IV. Conclusion.

For all of these reasons, RelComm requests a review of the SLD's decision to fund ACBOE's E-Rate application for Year Seven of the E-Rate program. RelComm requests that the funding decision be stayed pending full investigation by the Commission of these improprieties.

February 25, 2005

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RelComm further requests (1) a reversal of the SLD's decision to fund ACBOE's Year Seven application, and (2) suspension or disbarment of ACBOE and Alemar Consulting and its principal, Martin Friedman, from participation in the E-Rate program.

Thank you for your consideration of this request.

Respectfully submitted,

FLASTER/GREENBERG P.C.



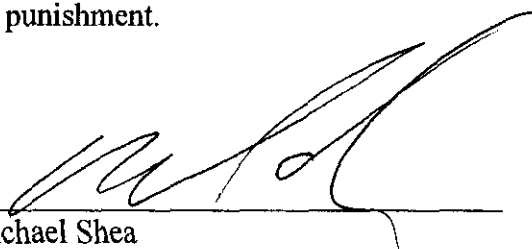
J. Philip Kirchner

JPK/kd

cc: Deborah Weinstein, Esquire (on behalf of Alemar Consulting and Martin Friedman)
Michael J. Blee, Esquire (on behalf of ACBOE)
Ralph Kelly, Esquire (on behalf of Micro Technology Groupe, Inc.)
Schools and Libraries Division
(all with enclosures)

VERIFICATION OF REQUEST FOR REVIEW

I, Michael Shea, am the president of RelComm, Inc., the aggrieved party that has filed the attached Request for Review. I certify that I have read the Request for Review and that the foregoing factual statements made in support thereof are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.



Michael Shea
RelComm, Inc.

DATED: February 25, 2005

RECEIVED SEP 19 2005

RECEIVED and
FILED
SEP 15 2005
ATLANTIC COUNTY
LAW DIVISION

LEVINE, STALLER, SKLAR, CHAN,
BROWN & DONNELLY, P.A.
Counselors at Law
3030 Atlantic Avenue
Atlantic City, New Jersey 08401
(609) 348-1300

JONATHAN B. JONES,

Plaintiff

v.

ATLANTIC CITY BOARD OF EDUCATION;
FREDRICK P. NICKLES as
SUPERINTENDANT OF THE ATLANTIC
CITY BOARD OF EDUCATION AND
INDIVIDUALLY; HEWLETT PACKARD
COMPANY; JOHN DOES 1-10; ABC
CORPORATIONS 1-10; XYZ PARTNERSHIPS
1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY

Civil Action

Docket No. ATL- L - 84-04

AMENDED COMPLAINT, JURY TRIAL
DEMANDED, and DESIGNATION OF TRIAL
COUNSEL

PARTIES TO THE ACTION

Plaintiff JONATHAN B. JONES, having an address at 209 N. Dudley Avenue, Ventnor,
New Jersey, by way of amended complaint against the Defendants hereby says:

1. Jonathan B. Jones was the Data Center Manager for Atlantic City Schools.
2. Defendant Frederick P. Nickles (hereinafter "Nickles") is the Superintendent of Schools for the City of Atlantic City, New Jersey. He is named both in his capacity as Superintendent and individually.
3. Defendant Atlantic City Board of Education (hereinafter the "Board") is an entity operating the public schools in the City of Atlantic City (hereinafter the "District") pursuant to the laws of the State of New Jersey.

4. Defendant Hewlett-Packard Company is a corporation of the State of Delaware, having an office in Palo Alto, California and doing business in the state of New Jersey.

5. John Does 1-10 are unknown persons; and

6. ABC Corporations and XYZ Partnerships are unknown entities. Collectively they are known as "unknown Defendants".

FACTS COMMON TO ALL COUNTS

7. Plaintiff Jones was employed by the Board as a hardware technician, in or about September of 1997.

8. In or about July of 1999, Plaintiff became the Data Center Manager for the Atlantic City School District.

9. In his capacity as hardware technician, and later as Data Center Manager, Plaintiff became involved in the process of applying for support and funding for the School District through the Universal Service Fund (the "Fund"), a funding mechanism mandated and expanded under the Federal Telecommunications Act of 1996, 47 U.S.C. § 254 (2002).

10. The Fund is generated through mandatory contributions from all telecommunications companies in the United States (47 U.S.C. § 254(d)), and administered by a non-profit corporation operating under the auspices of the Federal Communications Commission.

11. The Fund provides support for schools and libraries in accessing telecommunications services, networking and internet access, which support is denominated the "E-Rate discount".

12. The Atlantic City School District applied for, and received, support from the Fund in two distinct categories while Plaintiff was employed by the Board.

13. The District applied for, and received monies from the Fund reflecting reimbursement for a portion of the amounts actually expended by the District for telephone and internet services during particular years. The District also applied for funding for E-Rate "discounts" for certain improvements to the District's internal networking and internet systems.

14. In or about September of 2002, Defendant Nickles advised Plaintiff that the Board had contracted with a "computer consultant" to evaluate the Atlantic City Schools Computer Operations, and make recommendations for future growth.

15. In that context, Plaintiff was instructed in writing by Defendant Nickles to provide Mr. Nathan Berk, "Computer Consultant", with all information requested and to show him the District's "complete computer network system".

16. Nathan Berk is the Director of e-Business for Omicron Consulting.

17. In or about October of 2002, Omicron provided a report to the Board proposing major changes to the District's Network Infrastructure, and suggesting that Omicron begin implementation thereof, employing funding through the E-Rate program.

18. By memorandum dated October 24, 2002, Plaintiff made know to Defendant Nickles and other district administrators, his concerns regarding the legality, under State and Federal regulations, of contracting with a vendor to implement recommendations made by that same vendor while acting in the capacity of a consultant.

19. On November 20, 2002, Plaintiff was informed by Defendant Nickles that a consulting firm known as ComTec, and its subcontractor, Alemar, had been contracted to audit and/or take over the District's E-rate filings.

20. By memorandum of November 25, 2002, Plaintiff made known to Defendant Nickles, other District Administrators, and the Technology Committee Chair of the Board, his concerns regarding questionable sales practices employed by ComTec, regarding the technical background of ComTec and Alemar, questioning both firms' understanding of the E-rate program, and ability or desire to comply with the governing regulations thereof.

21. On January 7, 2003, Plaintiff addressed the Board at the public comments portion of a Board meeting, as to his concerns regarding the potential awarding of contracts to Alemar and ComTec, on the agenda for that meeting.

22. Plaintiff informed the Board verbally and in writing, among other things, that the firms were already working within the district without a contract.

23. Defendant Nickles interrupted and cut off Plaintiff's comments to the Board, with statements suggesting that Plaintiff lacked the required qualifications for his job, and that Plaintiff had previously worked for a company which had been awarded E-rate funded contracts in the District and otherwise placed Plaintiff in a false light and accused him of wrongdoing.

24. Following Defendant Nickles' outburst, the Board put off consideration of the ComTec and Alemar contracts until the next meeting, on January 14, 2003.

25. At the January 14, 2003 meeting, Defendant Nickles made specific false allegations as against Plaintiff, including, but not limited to:

- a) that Plaintiff had collaborated with the president of a vendor in producing bid specifications, to subvert the E-rate public bid process;
- b) that Plaintiff falsified his application for employment with the District;
- c) that Plaintiff had improperly entered District Buildings using other employee's security codes, and that certain files were now missing.

26. At the January 14, 2003 meeting, Plaintiff made known to the Board his belief that the multiple, duplicative "Form 470" requests for E-rate bids filed by Alemar, on behalf of the Board and without its authorization, were in violation of Federal Regulations.

27. At the January 14, 2003 meeting, the Board apparently voted to award contracts to ComTec and Alemar. Alemar was awarded a contract to manage the District's E-rate applications.

28. During January and February of 2003 various individuals and vendors approached Plaintiff to report continuing irregularities in Alemar's conduct of ongoing E-rate bid processes, and Plaintiff, in turn, reported these issues to individual Board Members.

29. In January of 2003, Defendant Nickles provided Michael Cavanaugh, Regional Account Executive for Defendant, Hewlett-Packard Company, with access to the District's Network Servers and Infrastructure.

30. By e-mail of January 31, 2003, Michael Cavanaugh informed Defendant Nickles and Assistant Superintendent Donna Haye that the District presumably through Plaintiff had purchased an "Aspen Beowulf Cluster" network system, and suggested that said system grossly exceeded the needs of the District.

31. The District has never purchased an "Aspen Beowulf Cluster" system.

32. Mr. Cavanaugh's e-mail of January 31, 2003, also made several suggestions "in preparation of a separation with John (sic) Jones", including to "suggest" a pirated software incident to Microsoft because "[c]hances are they will uncover some improprieties" with "heavy penalties that could be tied back to John (sic) Jones".

33. Mr. Jones reported the above and other activities to law enforcement authorities.

34. On February 12, 2003, Defendant Nickles suspended Plaintiff with pay from his position with the District.

35. On or about October 12, 2003, the Board voted to dismiss Plaintiff from his position as Data Center Manager, effective December 12, 2004.

COUNT ONE

Conscientious Employee Protection Act

36. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 35 herein as if fully stated herein.

37. During the course of his employment with the School Board, Mr. Jones on several occasions:

a). objected to activities, policies and practices, which he reasonably believed to be unlawful, fraudulent, criminal or against a clear mandate of public policy.

b). disclosed and threatened to disclose to supervisors and public bodies activities, policies and practices of the District and the Board and of companies doing business with the Board, which he reasonably believed to be unlawful, and

c). provided information to public bodies investigating the District and the Board, and companies doing business with the Board, for possible unlawful conduct.

38. On February 12, 2003, Defendant Nickles wrongfully suspended Plaintiff and thereafter the Defendant Board wrongfully terminated his employment.

39. Plaintiff's suspension and termination was, and is, wrongful and in violation of the Conscientious Employee Protection Act, sections 34:19-1 et seq. of the New Jersey Statutes.

WHEREFORE, Plaintiff seeks the following relief against the Defendant Nickles and the Board:

- a. compensatory damages;
- b. back and front pay;
- c. punitive damages;
- d. triple damages;
- e. costs;
- f. attorneys fees
- h. such other relief as the Court may find just and equitable.

COUNT TWO

Intentional and Negligent Infliction of Emotional Distress

40. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 39 herein as if fully stated herein.

41. Defendant Nickles and the Defendant Board had no valid reason for suspending, removing or terminating Mr. Jones or for taking the other actions set out above and did so for their own individual purposes and gain.

42. Defendant Board has intentionally or negligently inflicted emotional distress on Mr. Jones.

43. Defendant, Nickles in his capacity as Superintendent and in his individual capacity has intentionally and maliciously or negligently inflicted emotional distress on Mr. Jones.